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SH 2526452

EXHIBITS

A One (1) USB flash drive containing; the Homicide Bureau casebook, crime scene photographs, radio traffic, and surveillance video.

B Los Angeles County District Attorney's Letter of Opinion, dated May 18, 2022.

C Suspect Abraham Esquivel's medical documents.

D Los Angeles County Sheriff's Department Scientific Services Bureau Laboratory Examination Report, dated April 16, 2021.

E Superior Court of California, County of Los Angeles Minute Order, Case Number VA155518, dated March 17, 2021.

MISCELLANEOUS DOCUMENTS

Norwalk Station – PM Shift In-Service, dated February 12, 2021.

POST training records and range qualification records of Involved Deputy Juan Bendezu.

U.S. Certified Mail Receipt for Suspect Abraham Esquivel, dated October 15, 2022.

(6) Administrative Rights Force / Shooting Investigation forms.

INVESTIGATIVE SUMMARY

COUNTY OF LOS ANGELES
SHERIFF'S DEPARTMENT

INVESTIGATIVE SUMMARY

INCIDENT: **On-Duty Hit Shooting, Suspect Injured**

IAB FILE NUMBER: **SH 2526452**

URN#: **021-01842-0455-055**

DATE/TIME: **February 12, 2021 / 1807 hours**

LOCATION: [redacted]

SYNOPSIS

On February 12, 2021, at approximately 2125 hours, an Internal Affairs Bureau (IAB) response team comprised of Lieutenant Thomas Arellano [redacted] Sergeant Carmen Arballo, # [redacted] and Sergeant Blanca Creta, [redacted], responded to [redacted] in the city of Norwalk regarding an on-duty deputy involved hit shooting. Upon their arrival, Suspect Abraham Esquivel, booking #6134115, had been transported to Saint Francis Medical Center for gunshot wounds he sustained to his leg and buttocks area. On April 4, 2022, Sergeant Ashley Turner, [redacted] was subsequently assigned the administrative review of the incident.

IAB Lieutenant Arellano confirmed the on-duty watch commander, Lieutenant Pauline Panis [redacted] took reasonable steps to ensure the involved employee and witness personnel did not discuss the incident amongst themselves, or with uninvolved persons prior to being interviewed by the assigned investigators. In addition, IAB Lieutenant Arellano confirmed the involved personnel gathered in the company of a supervisor until they provided a voluntary statement to the assigned investigators.

Investigators Leopoldo Sanchez [redacted] and Raymond Lugo [redacted] from the Los Angeles County Sheriff's Department's Homicide Bureau assumed control of the shooting investigation. The results of their investigation, associated reports, and related content were compiled into digital files, Homicide Bureau casebook, under Uniform Report Number (URN) #021-01842-0455-055 **[EXHIBIT A, Homicide Bureau Casebook]**.

SUMMARY

On February 12, 2021, Deputy Juan Bendezu [redacted] worked PM shift at Norwalk Sheriff's Station as, Unit 45D3 (one man unit). Deputy Bendezu was assigned to the Norwalk Enforcement Team. The primary responsibilities of the Norwalk Enforcement Team were to assist the city of Norwalk with quality-of-life issues, assist detectives from Norwalk Station with the execution of arrest warrants, as well as saturate areas within the station's jurisdiction which experienced various crime.

At approximately 1800 hours, Deputy Bendezu patrolled the area of [redacted] at [redacted] As Deputy Bendezu patrolled the area, he heard emergent radio traffic broadcasted via radio by Deputy Dylan Butler [redacted] Unit 45D2. Deputy Butler worked a two-man unit with his partner, Deputy Jose Pena, [redacted] Both were assigned the Norwalk Enforcement Team.

Deputy Butler broadcasted he and his partner, Deputy Pena, were engaged in a vehicle pursuit of a suspect (Suspect Esquivel) for suspicion of reckless driving while under the influence. The vehicle was a 2004 white Mustang California license [redacted] Deputy Butler broadcasted he and Deputy Pena were northbound [redacted]

IAB Note: Prior to the initiation of the vehicle pursuit, Suspect Esquivel threw a suspected firearm from the vehicle, which was later recovered and determined to belong to Suspect Esquivel [EXHIBIT A, Homicide Bureau Casebook, page 57].

Deputy Bendezu responded Code-3 in one minute to the area of the pursuit. As Deputy Bendezu responded northbound on [redacted] he saw Suspect Esquivel's vehicle turn northbound on [redacted] from westbound [redacted] followed by Deputies Butler and Pena. Deputy Bendezu joined the vehicle pursuit. Suspect Esquivel's vehicle briefly yielded at the intersection of [redacted] and [redacted] and Suspect Esquivel partially exited his vehicle. Deputy Bendezu positioned his patrol vehicle behind Suspect Esquivel's vehicle to conduct a felony traffic stop. When Suspect Esquivel partially exited his vehicle, Deputy Bendezu recognized Suspect Esquivel as "Red", a gang member from the criminal street gang Varrio Norwalk, whom he had previously arrested for drugs and a firearm.

IAB Note: "Red" is Suspect Esquivel's moniker within Varrio Norwalk, a criminal street gang in the city of Norwalk.

When Suspect Esquivel yielded at [redacted] and [redacted] Deputy Butler communicated to Deputy Bendezu, he believed Suspect Esquivel had tossed a firearm out of his vehicle prior to the initiation of the vehicle pursuit.

Suspect Esquivel suddenly re-entered his vehicle and continued westbound on [redacted] and yielded at the intersection of [redacted] and [redacted]

Suspect Esquivel exited his vehicle and fled on foot, southbound on Gard Avenue. As Suspect Esquivel exited his vehicle, Deputy Bendezu noticed Suspect Esquivel reached toward his waistband with his right hand. Deputy Butler saw what he believed to be a firearm in Suspect Esquivel's hand. Deputy Pena saw a black metal object, which resembled a firearm, tucked into Suspect Esquivel's waistband. Suspect Esquivel ran southbound Gard Avenue on the east side sidewalk.

The deputies temporarily lost sight of Suspect Esquivel as he ran away from them. While Deputies Butler and Pena cleared Suspect Esquivel's vehicle, Deputy Bendezu saw Suspect Esquivel ran southbound, and initiated a foot pursuit. Deputies Butler and Pena immediately followed Deputy Bendezu in the foot pursuit. While Deputy Bendezu chased Suspect Esquivel, he saw a black object in Suspect Esquivel's hand which resembled a firearm. Deputy Bendezu attempted to broadcast he was in foot pursuit of Suspect Esquivel via his handheld radio but was unsuccessful due to multiple units broadcasting radio traffic simultaneously. Deputy Pena attempted to establish containment of the area via his handheld radio.

Within seconds as Suspect Esquivel ran southbound on [redacted] Suspect Esquivel entered a driveway which was associated to [redacted] The residence at [redacted] but the driveway of the home faced west on [redacted] along with the residence's detached garage. Deputy Bendezu briefly lost sight of Suspect Esquivel as he turned the corner, around a fence, into the driveway. As Deputy Bendezu approached, he adjusted his position to view beyond the fence where he was able to gain a visual of Suspect Esquivel. Suspect Esquivel ran south in the driveway, between two parked vehicles and the garage. Suspect Esquivel attempted to open a pedestrian gate and to gain access to the backyard of the residence.

Deputy Bendezu took cover behind the rear of a vehicle parked in the driveway. Suspect Esquivel was unsuccessful in his attempt to open the gate, which divided the detached garage from the residence. Deputy Bendezu continuously gave verbal commands to Suspect Esquivel, "Hey Red, don't do it. Drop the gun, drop the gun" **[Deputy Bendezu IAB Interview Transcript, page 34]**. Suspect Esquivel looked back at Deputy Bendezu and reached for his waistband. Suspect Esquivel lifted his right arm in an upward motion, holding a black object in his hand. Suspect Esquivel turned to his right, while his right arm moved in Deputy Bendezu's direction. Deputy Bendezu believed Suspect Esquivel pointed a firearm at him, and in fear for his life, Deputy Bendezu, in quick succession, fired three rounds at Suspect Esquivel. Deputy Bendezu did not have time to pick up his sights, due to his quick response to the perceived threat. Deputy Bendezu believed he fired all three rounds at the center of Suspect Esquivel's body from approximately one car length away. Suspect Esquivel fell to the ground.

Once Suspect Esquivel fell to the ground, Deputies Butler and Pena arrived. They asked Deputy Bendezu if he had been shot. Deputy Bendezu responded he was unsure. Deputies Butler and Pena quickly scanned Deputy Bendezu for possible blood,

bullet holes or ripped clothing. It was determined Deputy Bendezu had not been struck by gunfire.

While Suspect Esquivel was on the ground and detained at gunpoint from behind cover, Deputy Pena requested a shield to their location to conduct a tactical approach of Suspect Esquivel and requested fire department personnel to stage nearby. The Norwalk Enforcement Team Sergeant, Julio Saldana, [redacted] Unit 45DS, arrived on scene with a shield, along with Deputy Stephen Alvarado, [redacted] Unit 45K3. Sergeant Saldana, Deputies Bendezu, Butler, Pena, and Alvarado developed a tactical plan and approached Suspect Esquivel. Suspect Esquivel was handcuffed without the use of additional force and was placed in a recovery position. Approximately one minute later, the Los Angeles County Fire Department personnel from Engine Company 15 arrived and rendered medical aid to Suspect Esquivel. Suspect Esquivel was transported, via ambulance, to Saint Francis Medical Center, where he underwent emergency surgery.

IAB Note: **The area around Suspect Esquivel was searched. There was no firearm found. A black cell phone (JM-6) was recovered at [redacted] within feet of where Suspect Esquivel was. It was lying along the north exterior wall parallel to the asphalt driveway [EXHIBIT A, Homicide Bureau Casebook, page 65 and scene photographs].**

Sergeant Saldana ensured the safety and wellbeing of Deputy Bendezu, and the integrity of the crime scene. Sergeant Saldana received a safety statement from Deputy Bendezu which included the approximate amount of the rounds he fired and the direction in which they were fired. A search in the direction of the fired rounds for potential injured bystanders completed. None were located. Deputy Bendezu was transported to Norwalk Station and interviewed by Homicide Bureau investigators.

Norwalk Station deputies secured the scene for the preservation of evidence. Homicide Bureau investigators collected evidence, interviewed Department personnel witnesses, and completed an investigation **[EXHIBIT A, Homicide Bureau Casebook]**.

Deputy David Vivona, [redacted] Unit 45M responded to the area of [redacted] and [redacted] at the direction of Deputy Pena. Deputy Vivona was directed to look for an article Deputies Butler and Pena witnessed thrown from Suspect Esquivel's vehicle **[EXHIBIT A, Homicide Bureau Casebook, page 30]**. Deputy Vivona located a handgun in the front yard of [redacted]. Homicide Bureau Investigator, Kevin Acebedo, [redacted], responded to the location with Senior Criminalist Aaron Lewis, [redacted] and Anny Wu, [redacted] from the Scientific Services Bureau-Firearms Section. Forensic Identification Specialist Cathy Johnson [redacted] from the Scientific Services Bureau took photographs and measurements of the scene **[EXHIBIT A, Homicide Bureau Casebook, page 62]**. Senior Criminalist Lewis and Wu collected evidence related to the recovered suspect firearm.

At the time of the incident Norwalk Station personnel were not equipped with body-worn cameras.

DISTRICT ATTORNEY'S LETTER OF OPINION

The Justice System Integrity Division (JSID) of the Los Angeles County District Attorney's Office reviewed the non-fatal shooting incident. In their letter of opinion, dated May 18, 2022, Deputy District Attorney Alan Yochelson concluded based on the facts and evidence presented, Deputy Bendezu was reasonable in his belief that Esquivel had a gun and was about to shoot him. The law judges the deputy's actions based upon the reasonable perception of the threat. The evidence proves that Deputy Bendezu acted lawfully under the circumstances. The District Attorney's Office closed the case and determined no further action to be taken **[EXHIBIT B]**.

INVOLVED DEPARTMENT EMPLOYEE AND WORK HISTORY

Juan Bendezu [redacted] Deputy Sheriff
South Patrol Division – Norwalk Station

Work History

Date of Employment:	June 2, 2016
Date Assigned to Patrol/Norwalk Station:	February 17, 2019
Date Completed Patrol Training:	[redacted]
Prior Shooting Incident(s):	1

Equipment Worn on Person

On February 12, 2021, Deputy Bendezu wore a long-sleeved Class "A" uniform, a green outer protective vest and a Sam Browne duty-belt. The equipment on his duty-belt included:

Two fully loaded magazines
Two pair of handcuffs
OC spray
A Smith & Wesson M&P 9mm semiautomatic firearm with attached "Surefire" light

The equipment on his outer vest included:

Handheld radio
Two fully loaded magazines
Collapsible baton

SUSPECT INFORMATION

Abraham Esquivel
Male, Hispanic, DOB: October 28, 1986, 5'10", 225 pounds

[redacted]
CII #[redacted] MAIN #[redacted] FBI #[redacted]

The Consolidated Criminal History Reporting System (CCHRS) revealed Suspect Esquivel [redacted] Suspect Esquivel's Consolidated Criminal History Report is included in the Homicide Bureau Casebook **[EXHIBIT A, Homicide Bureau Casebook, pages 172 - 189]**.

SUSPECT INJURIES

Suspect Esquivel

On February 12, 2021, Suspect Esquivel was treated, under patient [redacted] at Saint Francis Medical Center for gunshot wounds he sustained to his left leg and buttocks. On February 26, 2021, Suspect Esquivel was discharged by Doctor Hugh S. Chung. The discharge summary indicated Suspect Esquivel was treated for a gunshot wound which caused an open sacral fracture, rectal injury, a wound infection, and the implementation of a colostomy bag, according to Suspect Esquivel's medical records **[EXHIBIT C]**.

Saint Francis Medical Center conducted a drug and alcohol analysis test of Suspect Esquivel's blood and concluded in their Laboratory Analysis Summary Report, dated February 12, 2021, Suspect Esquivel had positive results for the presence of Amphetamine and Benzodiazepine **[EXHIBIT C, Emergency Department Toxicology]**.

INVOLVED EMPLOYEE INJURIES

None.

PHYSICAL EVIDENCE

All physical evidence was located and collected by Los Angeles County Sheriff's Department Homicide Bureau personnel and Scientific Services Bureau personnel. For a description of the evidence collected and their locations, see the Homicide Bureau Book **[EXHIBIT A, Homicide Bureau Casebook, pages 32, 40, 44, 57-60]**.

INVESTIGATOR'S OBSERVATIONS

The scenes were described in detail by Homicide Bureau Investigators Sanchez, Lugo, Acebedo, and Alfred Jaime, [redacted] **[EXHIBIT A, Homicide Bureau Casebook, pages 34 – 35, 62, 64]**. Their description of the scene was consistent with IAB Investigator's observations. The scene and related evidence were photographed by personnel from the Scientific Service Bureau **[EXHIBIT A, Crime Scene Photographs]**.

WEAPON USED BY DEPUTY PERSONNEL

Deputy Bendezu fired three rounds of Department issued 9mm ammunition from his Department issued Smith & Wesson M&P, serial number [redacted] 9mm, semi-automatic firearm. The firearm was examined by Senior Criminalist Amy Wu, [redacted] of the Scientific Services Firearms Identification Section and found to be functional **[EXHIBIT A, Homicide Bureau Casebook, pages 210 - 211]**.

Date last qualified: [redacted]
Date last trained with weapon:

WEAPON USED BY SUSPECT ESQUIVEL

A firearm was located in the front yard of [redacted] which was believed to have been discarded by Suspect Esquivel. The recovered firearm was a manufactured semiautomatic 9mm, which consisted of a black polymer aftermarket lower frame with a blue steel "Glock 43" slide and barrel. The serial number was obliterated from the barrel. The firearm was located in a raised brick planter along the southeast property line of [redacted] The firearm contained the upper portion of the magazine which was seated in the magazine well. Multiple pieces of the magazine, along with seven live 9mm cartridges were also located which were scattered in the direct vicinity. The firearm did not have a live cartridge in the firing chamber **[EXHIBIT A, Homicide Bureau Casebook, page 57-59, 63]**. A functionality test of the firearm was performed, which determined the firearm was functional **[EXHIBIT D]**.

> **IAB Note: The Laboratory Examination Report, dated April 16, 2021, was not included in the Homicide Casebook.**

DNA swabs were taken from the recovered firearm, on the trigger/trigger guard, slide and frame, grip, and magazine. The swabs were analyzed, and three of the four swabs of DNA were found to originate from Suspect Esquivel **[EXHIBIT A, Homicide Bureau Casebook, pages 206-209]**.

PROPERTY DAMAGE

Homicide Investigators located three areas of bullet-related damage at [redacted] The first strike was located on the concrete landing west of the wrought iron screen door. The second bullet strike was located to the lower horizontal sill of the door frame. A third bullet strike was located in the security screen **[EXHIBIT A, Homicide Bureau Casebook, page 65]**.

Property damage was documented in a Los Angeles County Sheriff's Department Scientific Services Bureau Crime Scene Investigation Report, authored by Senior Criminalist Wu, **[EXHIBIT A, Homicide Casebook, pages 200-202]**.

CRIMINAL INVESTIGATION AND CHARGES FILED

The criminal investigation into the shooting was handled by Homicide Bureau Investigators Sanchez and Lugo, of the Los Angeles County Sheriff's Department.

Suspect Esquivel was charged with Evading a Peace Officer, 2800.2 V.C., Felon in Possession of a Firearm, 29800(a)(1) P.C., and Reckless Driving, 23103(a) V.C. Suspect Esquivel was convicted of Evading a Peace Officer, 2800.2 V.C. and Felon in Possession of a Firearm, 29800(a)(1) P.C. See Bellflower Courthouse Minute Order, Superior Court of California, County of Los Angeles, case VA155518 **[EXHIBIT E]**.

LIGHTING AND WEATHER CONDITIONS

On February 12, 2021, the sun set at 5:34 PM in California. This incident began at approximately 6:07 PM during the hours of dusk. The scene was illuminated by overhead streetlights and involved personnel flashlights. The weather was clear and cool.

RADIO TRANSMISSION

IAB investigators reviewed all radio traffic associated with the incident. Norwalk Station broadcasted over the Sheriff's Communication Center (SCC) radio frequencies of Dispatch 13 and Advanced Tactical radio frequency (A-Tac 3). The associated radio traffic was placed into a digital file **[EXHIBIT A, Radio Traffic]**. The following are approximate chronologically summarized excerpts from the selected radio traffic. The times used to mark significant broadcasts are the elapsed times on the recordings, not the actual time the transmission occurred.

DISPATCH 13

5:12 **Unit** 45D2, Deputy Butler requested the patch and broadcasted he and his partner were in a vehicle pursuit, northbound Pioneer Boulevard from Excelsior Drive. He requested additional units Code-3 and an Aero unit.

5:39 **Unit** 45D3, Deputy Bendezu broadcasted on the patch he was responding Code-3 in one minute.

5:46 **Unit** 45D2, updated their location to westbound [redacted] approaching Flallon Avenue

6:04 **Unit** 45D3 advised he was Code-6 (Out for Investigation).

6:07 **Unit** 45D2, updated their location to westbound [redacted] Deputy Butler stated the vehicle yielded then proceeded westbound [redacted] just west of [redacted]

6:29 **Unit** 45D3, advised the suspect fled on foot.

6:34 **Unit** 45D2, Deputy Pena, began to set up a containment.

6:39 **Unit** 45D3, Deputy Bendezu attempted to broadcast radio traffic, but was unsuccessful, due to multiple units attempting to broadcast simultaneously.

6:45 **Unit** 45D3, Deputy Bendezu attempted to broadcast radio traffic again, but was unsuccessful.

6:49 SCC asked if there was a deputy in foot pursuit.

6:59 Aero asked what direction the suspect ran.

7:03 **Unit** 45D3 broadcasted 998 (Deputy Involved shooting).

7:37 **Unit** 45DS asked Deputy Butler and Deputy Pena if they were okay.

7:47 **Unit** 45D2, Deputy Pena broadcasted all units were accounted for and his location.

8:04 **Unit** 45D2, Deputy Pena requested for the Fire Department to stage nearby.

9:26 **Unit** 45DS broadcasted he arrived on scene.

9:32 **Unit** 45D2, Deputy Pena requested a shield.

11:37 **Unit** 41S broadcasted the suspect was handcuffed and they were Code-4 (No further assistance needed).

11:46 **Unit** 45DS requested the Fire Department to drive to the scene.

14:03 **Unit** 45D2, Deputy Pena requested a unit to conduct an article search on [redacted]

14:17 **Unit** 45M broadcasted he would respond to [redacted]

15:10 **Unit** 43K1 broadcasted the command post would be set up at Los Alisos Middle School.

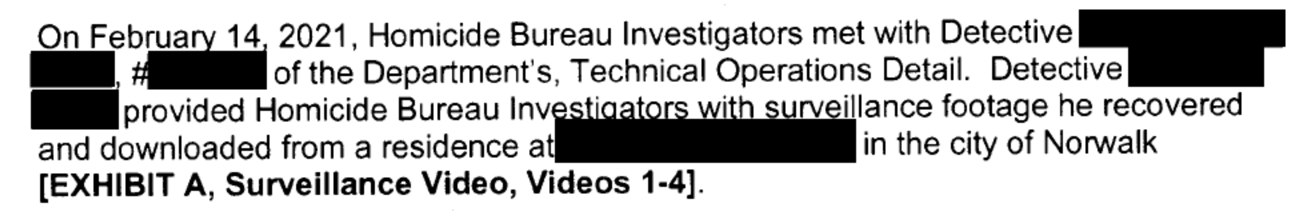
18:29 Patch dropped; units advised to switch to A-Tac 3.

A-TAC 3

20:50 Unknown unit advised an article, “417” (Firearm) was recovered at [redacted]

IAB Note: The remainder of the A-TAC 3 traffic was containment activity only, with no other significant radio transmissions.

SURVEILLANCE VIDEO



On February 14, 2021, Homicide Bureau Investigators met with Detective [redacted], #[redacted] of the Department's, Technical Operations Detail. Detective [redacted] provided Homicide Bureau Investigators with surveillance footage he recovered and downloaded from a residence at [redacted] in the city of Norwalk **[EXHIBIT A, Surveillance Video, Videos 1-4]**.

Homicide Bureau Investigators recovered surveillance footage from [redacted] in the city of Norwalk **[EXHIBIT A, Surveillance Video, Videos 5-6]**. The surveillance footage displayed a northeast view and an east view from the residence.

Homicide Investigators recovered surveillance footage from [redacted] in the city of Norwalk **[EXHIBIT A, Surveillance Video, Video 7]**. The surveillance footage displayed a northwest view from the residence.

IAB investigators obtained and reviewed seven surveillance videos associated with the incident. IAB investigators identified witnesses to the events surrounding the incident and conducted interviews.

The following are numbered videos with a brief description, which were downloaded onto a corresponding flash drive **[Exhibit A, Surveillance Video]**. The times noted below represent the times of significant action on the videos, not the actual time of the incident.

[redacted]

Video #	Description
1	Front Yard (42:47) Suspect vehicle traveled westbound [redacted] onto southbound [redacted] and failed to stop at the intersection. (42:49) 45D2's radio car followed the suspect vehicle with their rotating lights activated.
2	Front Yard (03:00) Unit 45M traveled northbound on [redacted] (06:14) Unit 45M traveled southbound on [redacted] (07:38) 45M dismounted his motorcycle and searched the area for a firearm the suspect discarded.
3	Front Yard (42:51) Suspect vehicle traveled southbound [redacted] (42:52) 45D2's radio car followed the suspect vehicle with their rotating lights activated.
4	Front Yard

	(02:57) 45M traveled northbound on [redacted] (06:19) 45M traveled southbound on [redacted] (07:38) 45M dismounted his motorcycle and searched the area for a firearm the suspect discarded.

11468 Potter Street

Video #	Description
5	Front Yard (02:19) Suspect ran southbound on [redacted] on the east sidewalk, followed by Deputy Bendezu, Deputy Butler, and Deputy Pena.
6	Side Yard (15:10) Suspect ran southbound on [redacted] on the east sidewalk, followed by Deputy Bendezu, Deputy Butler, and Deputy Pena.

11502 Potter Street

Video #	Description
7	Side Yard (00:04) Suspect ran southbound on [redacted] on the east sidewalk, followed by Deputy Bendezu, Deputy Butler, and Deputy Pena.

STATEMENTS

The following narratives are intended only as a synopsis of the interviews. Additional information and precise wording may be obtained by reviewing the digitally audio recorded interviews and verbatim transcriptions

INVOLVED DEPARTMENT PERSONNEL

Deputy Juan Bendezu

Homicide Interview

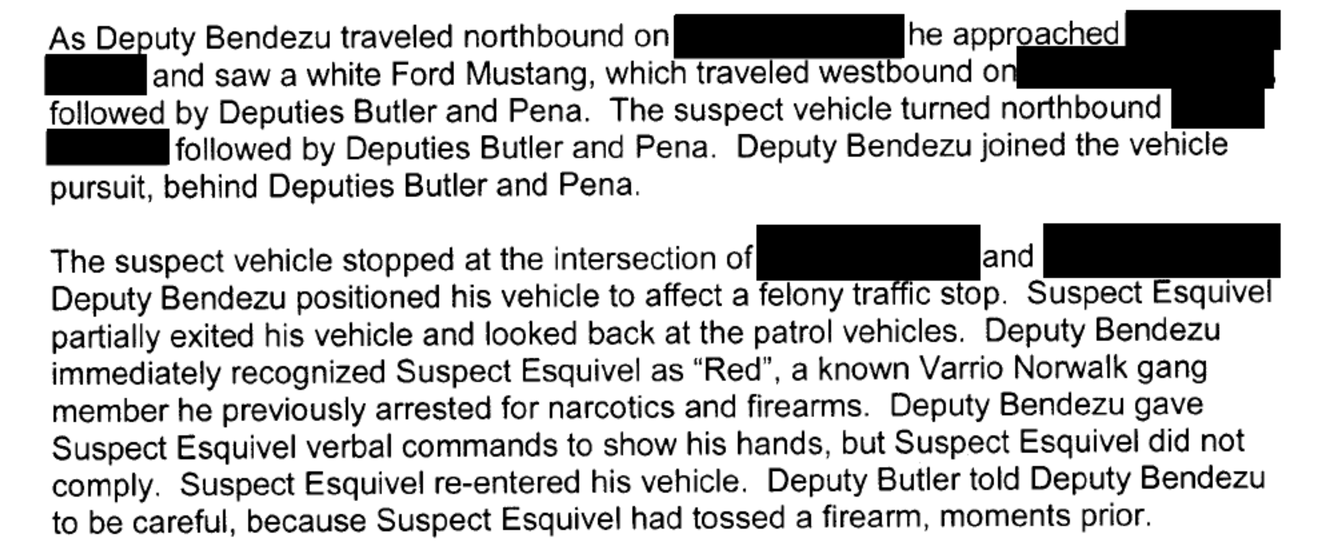
On February 18, 2021, Deputy Bendezu was interviewed by Homicide Bureau Investigators Sanchez and Lugo. The interview was audio recorded, summarized, and precise wording may be obtained in the Homicide Book **[EXHIBIT A, Homicide Bureau Casebook pages 42-45, and Deputy Bendezu Homicide Bureau interview Transcript pages 79-99]**.

IAB Interview

On October 5, 2022, Deputy Bendezu was interviewed by IAB Investigators at the IAB office in the city of Commerce. Deputy Bendezu was represented by Attorney Maureen Okwuosa.

On February 12, 2021, Deputy Bendezu was assigned as Unit 45D3, at Norwalk Station. Deputy Bendezu worked alone; however, he was a part of the Norwalk Enforcement Team. The main responsibility of the Norwalk Enforcement Team was to assist the city with quality-of-life issues and be present at school events.

Deputy Bendezu was in uniform and drove a marked black and white patrol vehicle when he heard emergent radio traffic broadcasted over the duplex patch by his Norwalk Enforcement Team partners, Deputies Butler and Pena, Unit 45D2. Deputies Butler and Pena broadcasted they were in vehicle pursuit of a reckless driver under the influence (DUI) suspect, their location, and requested units Code-3. Deputy Bendezu was a few blocks away and broadcasted he would respond in one minute.



As Deputy Bendezu traveled northbound on [redacted] he approached [redacted] and saw a white Ford Mustang, which traveled westbound on [redacted] followed by Deputies Butler and Pena. The suspect vehicle turned northbound [redacted] followed by Deputies Butler and Pena. Deputy Bendezu joined the vehicle pursuit, behind Deputies Butler and Pena.

The suspect vehicle stopped at the intersection of [redacted] and [redacted] Deputy Bendezu positioned his vehicle to affect a felony traffic stop. Suspect Esquivel partially exited his vehicle and looked back at the patrol vehicles. Deputy Bendezu immediately recognized Suspect Esquivel as "Red", a known Varrio Norwalk gang member he previously arrested for narcotics and firearms. Deputy Bendezu gave Suspect Esquivel verbal commands to show his hands, but Suspect Esquivel did not comply. Suspect Esquivel re-entered his vehicle. Deputy Butler told Deputy Bendezu to be careful, because Suspect Esquivel had tossed a firearm, moments prior.

Suspect Esquivel drove westbound on [redacted] and then suddenly stopped. As Deputy Bendezu stopped his patrol vehicle behind Deputies Butler and Pena' patrol vehicle, they told Deputy Bendezu, Suspect Esquivel fled, and they would clear the suspect vehicle. As Deputy Bendezu approached the suspect vehicle with Deputies Butler and Pena, he established a visual of Suspect Esquivel, who ran southbound on [redacted] After Deputies Butler and Pena cleared the suspect vehicle, Deputy Bendezu went in foot pursuit of Suspect Esquivel. Deputy Bendezu saw Suspect Esquivel looked back at him, while Suspect Esquivel held his waistband. Deputy Bendezu then saw a black object in Suspect Esquivel's right hand. Deputy Bendezu believed Suspect Esquivel had a firearm based on his previous arrest of Suspect Esquivel for possession of a firearm. Deputy Bendezu and his partners, Deputies Butler and Pena yelled at Suspect Esquivel, "Red, Red, drop the gun! Drop the gun!" **[Deputy Bendezu IAB Interview Transcript, page 26]**.

Deputy Bendezu broadcasted, via his handheld radio, he was in foot pursuit of Suspect Esquivel and his direction of travel.

IAB Note: **Deputy Bendezu was involved in a foot pursuit of Suspect Esquivel. The foot pursuit covered approximately 300 feet [See Foot Pursuit Evaluation Form].**

IAB Note: **Deputy Bendezu was not successful in the broadcast of his foot pursuit traffic. This was due to multiple units attempting to broadcast simultaneously.**

Simultaneously, Deputy Pena attempted to set up a containment of Suspect Esquivel over the radio. Deputy Pena broadcasted their updated foot pursuit location of southbound [redacted]

Suspect Esquivel approached a residence on the southeast corner of [redacted] and [redacted] and entered the driveway on the west side of the residence. The driveway was obstructed by a fence to the north. Deputy Bendezu carefully turned the corner to see around the fence and into the driveway.

Deputy Bendezu saw Suspect Esquivel run between two parked vehicles in the driveway and the residence's garage. Suspect Esquivel ran toward a metal security gate, which Deputy Bendezu assumed was an entrance into the backyard of the location. Suspect Esquivel was unable to open the security gate. Deputy Bendezu positioned himself behind one of the vehicles in the driveway, which was parked furthest south. Suspect Esquivel reached in his waistband and turned his right shoulder and right elbow toward Deputy Bendezu. Deputy Bendezu saw a black object in Suspect Esquivel's right hand, which Suspect Esquivel held like a firearm and began to point at Deputy Bendezu. Deputy Bendezu stated Suspect Esquivel gripped the bottom of the black object.

Deputy Bendezu feared Suspect Esquivel was about to shoot him. Deputy Bendezu jumped back and fired three rounds at Suspect Esquivel from a distance of one car length. On the third round, Suspect Esquivel fell to the ground, and Deputy Bendezu reassessed. Deputy Bendezu broadcasted over his handheld radio he had been involved in a shooting and continued to detain Suspect Esquivel at gunpoint **[EXHIBIT A, Radio Traffic]**. Deputies Butler and Pena checked Deputy Bendezu's body to ensure he had not been struck by gunfire.

Deputy Bendezu was unaware if the garage was occupied when he fired at Suspect Esquivel. Deputy Bendezu did not have time to pick up his sights because Suspect Esquivel quickly turned toward him. Deputy Bendezu believed he aimed at the center mass of Suspect Esquivel's body. Deputy Bendezu and his partners requested for a ballistic shield to their location. Deputy Bendezu and his partners discussed a tactical plan and approached Suspect Esquivel with the ballistic shield. Suspect Esquivel was

handcuffed and placed in the recovery position. The fire department personnel responded within a minute and treated Suspect Esquivel for his injuries.

Deputy Bendezu told Sergeant Saldana how many rounds he fired and in what direction. A check of the area was conducted for possible gunshot victims. Deputy Bendezu was transported to Norwalk Station and interviewed by Homicide Bureau Investigators.

WITNESS DEPARTMENT PERSONNEL

Deputy Dylan Butler

Homicide Bureau Interview

On February 18, 2021, Deputy Butler was interviewed by Homicide Bureau Bureau Investigators Sanchez and Lugo. The interview was audio recorded, summarized, and precise wording may be obtained in the Homicide Bureau Casebook **[EXHIBIT A, Homicide Bureau Casebook pages 45-49, and Deputy Butler Homicide Bureau interview Transcript pages 118-134]**.

IAB Interview

On September 27, 2022, Deputy Butler was interviewed by IAB Investigators at the IAB office in the city of Commerce. Deputy Butler was represented by Attorney Maureen Okwuosa.

On February 12, 2021, Deputies Butler and Pena were assigned as Unit 45D2, at Norwalk Station. Deputies Butler and Pena worked with Deputy Bendezu on the Norwalk Enforcement Team. On February 12, 2021, Deputy Butler was the passenger and Deputy Pena was the driver.

Deputy Butler stated they conducted a patrol of a residential neighborhood known as the "One Ways." Deputy Butler stated the "One Ways" was a residential neighborhood in Norwalk with a multitude of short one-way streets, which are known to be occupied by the criminal street gang, Varrio Norwalk.

While on patrol, Deputies Butler and Pena noticed a white Ford Mustang speed in front of them and drove on the wrong side of the road. The vehicle approached the intersection of [redacted] and [redacted] and failed to stop at the posted stop sign.

The suspect vehicle proceeded northbound on [redacted] Deputy Butler suspected the driver of the vehicle was under the influence of alcohol or a controlled substance and that impairment caused the reckless driving.

Deputy Pena decided to conduct a traffic stop of the vehicle. As Deputy Pena attempted to close the distance, the suspect vehicle turned westbound onto Ferina Street. Deputy Butler attempted to run the vehicle's license plate on his Mobile Digital Computer (MDC). Deputy Pena closed the distance and activated the patrol vehicle's overhead lights to conduct a traffic stop as they approached [redacted]. The suspect vehicle turned southbound onto [redacted] and a black object flew out of the suspect's passenger side window. Deputy Butler thought it was a gun and said he heard a "clunking" sound when the object hit the ground. Deputy Butler perceived the object to be heavy **[Deputy Butler IAB Interview Transcript, page 13]**.

Deputy Butler said he did not have time to broadcast information regarding the article he saw thrown from the suspect vehicle. Deputy Pena initiated a pursuit of a reckless DUI suspect. Deputy Butler broadcasted over the duplex patch they were in a vehicle pursuit northbound [redacted].

IAB Note: **The vehicle pursuit covered approximately .87 of a mile and had an average speed of 35.6 miles per hour [See Vehicle Pursuit Evaluation Form].**

IAB Note: **A Geospatial Tracker Report (GST) with detailed information including global positioning system (GPS) recorded Units 45D2 and 45D3 location and their speeds. The report also documents the patrol vehicle's emergency lights activation with the intermittent use of the siren [See Vehicle Pursuit Evaluation Form and the Geospatial Tracking Report].**

The suspect vehicle continued northbound on [redacted] and continued toward [redacted] The suspect vehicle turned westbound [redacted] against a red light and drove westbound. Deputy Butler updated their location to westbound [redacted] as they approached [redacted] The suspect vehicle turned northbound onto [redacted] and then westbound onto [redacted] when the suspect vehicle suddenly stopped. Deputy Butler described the location of where the suspect vehicle stopped as near the limit line for eastbound [redacted] Deputies Pena and Bendezu positioned their vehicles for a felony traffic stop.

The suspect's driver's side door opened, Suspect Esquivel partially stepped out of the vehicle. Deputy Butler recognized Suspect Esquivel from previous encounters. Suspect Esquivel retreated back into his vehicle and spun the rear tires while accelerating which caused his vehicle to lose traction on the street. Deputy Butler told Deputy Bendezu, "Hey, it's Red. Be careful. I think he threw a gun. He threw a gun" **[Deputy Butler IAB Interview Transcript, page 19]**. Deputy Butler believed Suspect Esquivel was under the influence of a stimulant because he appeared stressed and panicked.

Suspect Esquivel drove westbound on [redacted] and stopped a second time just east of [redacted] Suspect Esquivel exited his vehicle while grasping a black object

near his waistband. Deputy Butler yelled verbal commands at Suspect Esquivel to drop the gun and to put his hands up. Suspect Esquivel ignored Deputy Butler and ran southbound on [redacted] Deputies Butler and Pena cleared the suspect vehicle, while Deputy Bendezu followed behind them. Deputy Bendezu went in foot pursuit of Suspect Esquivel once the suspect vehicle was cleared. Deputy Butler heard Deputy Bendezu yell he was in foot pursuit and believed he had broadcasted it over the radio. Deputy Pena attempted to set up a containment of Suspect Esquivel over the radio.

Deputy Butler joined the foot pursuit and ran behind Deputy Bendezu, southbound on Gard Avenue. Deputy Pena joined the foot pursuit and ran behind Deputy Butler. Deputy Butler never lost sight of Deputy Bendezu. Deputy Butler heard Deputy Bendezu gave verbal commands to Suspect Esquivel to stop running and to drop the gun. Deputy Butler lost sight of Suspect Esquivel as he ran into a driveway just north of Mapledale Street. Deputy Butler heard Deputy Bendezu say, "Drop the gun. Show me your hands" **[Deputy Butler IAB Interview Transcript, page 32]**. Deputy Butler heard three gunshots but did not see any muzzle flash. Deputy Butler saw Deputy Bendezu had his firearm pointed east toward where Suspect Esquivel ran. Deputy Butler heard Deputy Bendezu broadcast over the radio he had been involved in a shooting. Deputy Butler saw Suspect Esquivel down on the ground near the garage and detained Suspect Esquivel at gunpoint with Deputy Bendezu. Deputy Pena arrived within a few seconds. Deputy Butler checked Deputy Bendezu to ensure he had not been struck by gunfire.

Sergeant Saldana arrived at their location with a ballistic shield, and they discussed how they would take Suspect Esquivel into custody. Deputy Pena requested over the radio for the fire department to stage nearby. They formed a contact team, approached Suspect Esquivel, and handcuffed him. The fire department personnel arrived at the scene one to two minutes later and rendered medical aid to Suspect Esquivel. Deputy Butler was transported to Norwalk Station and interviewed by Homicide Bureau Investigators.

Deputy Jose Pena

Homicide Interview

On February 18, 2021, Deputy Pena was interviewed by Homicide Bureau Investigators Sanchez and Lugo. The interview was audio recorded, summarized, and precise wording may be obtained in the Homicide Bureau Casebook **[EXHIBIT A, Homicide Bureau Casebook, pages 43-45, and Deputy Pena's Homicide Bureau Transcript pages 100-117]**.

IAB Interview

On September 29, 2022, Deputy Pena was interviewed by IAB Investigators at the IAB office in the city of Commerce. Deputy Pena was represented by Attorney Maureen Okwuosa.

On February 12, 2021, Deputies Pena and Butler were assigned as Unit 45D2, at Norwalk Station, and assigned to the Norwalk Enforcement Team. The main responsibility of the Norwalk Enforcement Team was to patrol high crime areas. On February 12, 2021, Deputy Pena was the driver and Deputy Butler was the passenger.

While on patrol, Deputy Pena saw a white Mustang drive on the wrong side of the road. The vehicle approached the intersection of [redacted] and [redacted] and failed to stop at the posted stop sign.

The suspect vehicle drove northbound on [redacted] and turned westbound on [redacted] Deputy Pena attempted to initiate a traffic stop of the vehicle. As Deputy Pena attempted to close the distance, the suspect vehicle turned southbound onto [redacted] and a black object was thrown out the suspect's passenger side window. Deputy Pena activated his patrol vehicle's overhead lights and sirens.

Deputy Pena heard a metal object hit the concrete. Deputy Pena said it sounded like a metal firearm. Deputy Pena was unable to see how many occupants were in the suspect vehicle. The suspect vehicle failed to yield and continued westbound [redacted] and turned northbound on [redacted]

Deputy Butler broadcasted over the duplex patch they were in a vehicle pursuit northbound [redacted] at [redacted] of a reckless DUI suspect. The suspect vehicle continued northbound on [redacted] and continued toward [redacted] The suspect vehicle turned westbound [redacted] against a red light and proceeded westbound. The suspect vehicle turned northbound onto [redacted] and then westbound onto [redacted] when the suspect vehicle suddenly stopped.

The suspect vehicle's front driver's side door opened, Suspect Esquivel partially stepped out and looked toward Deputy Pena. Deputy Pena heard Deputy Butler tell another deputy in a patrol vehicle, which he believed was behind them, Suspect Esquivel had possibly just tossed a firearm.

Suspect Esquivel re-entered his vehicle and sped off which caused the rear of the vehicle to lose traction and moved from side to side. Deputy Pena recognized Suspect Esquivel from prior arrests. Suspect Esquivel appeared to be sweating and his eyes were big, which made Deputy Pena believe Suspect Esquivel was under the influence of narcotics.

Suspect Esquivel drove westbound on [redacted] and stopped a second time at [redacted] Suspect Esquivel exited his vehicle and faced Deputy Pena. Suspect Esquivel had both of his hands near his waistband where a black metal object was tucked in his waistband. Suspect Esquivel then run southbound on [redacted]

Deputies Butler and Pena cleared the suspect vehicle. Once the suspect vehicle was cleared, Deputy Bendezu went in foot pursuit of Suspect Esquivel. Deputies Pena and

Butler followed in the foot pursuit of Suspect Esquivel. Deputy Pena broadcasted they needed to establish a containment and they were in foot pursuit. Deputy Pena believed Deputy Bendezu had attempted to broadcast radio traffic at the same time, which prevented Deputy Bendezu's radio traffic from being transmitted. Deputy Pena maintained a visual of Deputies Bendezu and Butler while they ran southbound on Gard Avenue but was unable to see Suspect Esquivel due to darkness which obscured his view.

Deputy Bendezu gave verbal commands to Suspect Esquivel to show his hands. Deputy Bendezu faced east toward a driveway which faced Gard Avenue. Deputy Pena heard three gunshots in quick succession but did not see any muzzle flash. When Deputy Pena caught up to Deputy Bendezu, he ensured Deputy Bendezu had not been struck by gunfire. Deputy Pena heard Deputy Bendezu broadcast he had been involved in a shooting.

Deputy Pena requested for a ballistic shield to their location to approach Suspect Esquivel. Sergeant Saldana arrived with a ballistic shield, and they discussed a tactical plan of how they would approach and arrest Suspect Esquivel. Deputy Pena requested for fire department personnel to stage nearby. The contact team approached Suspect Esquivel and handcuffed him. Fire department personnel arrived within one to two minutes and rendered medical aid to Suspect Esquivel. Prior to the fire department's arrival, Suspect Esquivel was placed in the recovery position, while an unknown deputy went to obtain a tourniquet. Fire personnel arrived seconds later and rendered medical aid to Suspect Esquivel. Deputy Pena did not see Suspect Esquivel's injuries due to the lighting. Deputy Pena stated he was later transported to Norwalk Station by Sergeant Saldana and interviewed by Homicide Bureau Investigators.

Sergeant Julio Saldana

On September 14, 2022, Sergeant Saldana was interviewed by IAB Investigators at the IAB office in the city of Commerce without representation.

On February 12, 2021, Sergeant Saldana was assigned as the Norwalk Enforcement Team sergeant, Unit 45DS. Sergeant Saldana heard Deputies Butler and Pena, broadcast over the radio they were in vehicle pursuit of a reckless DUI suspect. Sergeant Saldana responded to the termination at [redacted]

Sergeant Saldana exited his patrol vehicle with a ballistic shield. Sergeant Saldana ensured all involved deputies were accounted for and not injured. Once a plan was formulated to contact the suspect, Sergeant Saldana held the ballistic shield as they approached the downed and injured suspect. Once Suspect Esquivel was handcuffed, fire department personnel arrived approximately two minutes later and treated Suspect Esquivel for his injuries.

Sergeant Saldana obtained a safety statement from Deputy Bendezu which included how many rounds he fired and in what direction. A check of the area where Deputy Bendezu fired was conducted and there were no additional gunshot victims.

Sergeant Saldana ensured Deputies Bendezu, Butler and Pena were transported to Norwalk Station and the policy of no huddling was observed pending their interviews with Homicide Bureau Investigators.

Deputy Stephen Alvarado

On September 14, 2022, Deputy Alvarado was interviewed by IAB Investigators at Norwalk Station.

On February 12, 2021, Deputy Alvarado worked Norwalk station patrol on PM shift as Unit 45K3. On February 12, 2021, Deputy Alvarado worked as a one-person nit. Deputy Alvarado responded to emergent radio traffic regarding a vehicle pursuit and a foot pursuit. Due to the short distance of the vehicle pursuit and subsequent foot pursuit, Deputy Alvarado did not participate.

Deputy Alvarado responded to Gard Avenue and Mapledale Street and saw Deputies Bendezu, Butler and Pena with their firearms drawn, and faced east. Once Deputy Alvarado arrived at their position, he saw Suspect Esquivel laying on the ground. Deputy Alvarado drew his firearm and pointed it east toward Suspect Esquivel.

Sergeant Saldana arrived on scene with a ballistic shield. Together, they formed a contact team and approached Suspect Esquivel. Deputy Alvarado remembered Deputy Bendezu and Deputy Pena handcuffed Suspect Esquivel and he searched Suspect Esquivel. Within a minute, Fire Department personnel arrived on scene and treated Suspect Esquivel for his injuries.

Deputy Alex Hernandez

On September 13, 2022, Deputy Hernandez was interviewed by IAB Investigators at Men's Central Jail (MCJ).

On February 12, 2021, Deputy Hernandez worked Norwalk Station patrol PM shift as Unit 48A. Deputy Hernandez was on [redacted] at the time of the incident and Deputy John Balarosan, #[redacted] was his partner [redacted]

IAB Note: [redacted]

During his shift, Deputy Hernandez heard over the radio Deputies Butler and Pena were in vehicle pursuit of a reckless DUI suspect. Deputies Hernandez and Balarosan did not participate in or witness either the vehicle pursuit or foot pursuit. Deputies

Hernandez and Balarosan responded to the intersection of [redacted] and [redacted] Street where the deputy involved shooting took place. Upon their arrival, Deputy Hernandez assisted the secured the scene with crime scene tape. Deputy Hernandez noticed Suspect Esquivel was treated by fire department personnel.

Deputies Hernandez and Balarosan took the handle on the incident and memorialized their actions in their reports. An assisting deputy was assigned to start a major incident log. Other assisting deputies were assigned to canvass the surrounding area for potential witnesses and video surveillance. An assisting deputy was assigned to the scene of the terminus of the vehicle pursuit and to provide security of the vehicles **[EXHIBIT A, Homicide Bureau Casebook, pages 1-18]**.

SUSPECT STATEMENTS

Suspect Abraham Esquivel

Homicide Interview

On February 15, 2021, Suspect Esquivel was interviewed by Homicide Bureau Investigators Sanchez and Lugo. The interview was audio recorded, summarized, and transcribed. Precise wording may be obtained by reviewing the audio recording and transcription **[EXHIBT A, Homicide Bureau Casebook, pages 37- 40 and Suspect Esquivel Homicide Bureau Transcript]**. The following is a summary of Suspect Esquivel's interview with Homicide Bureau Investigators.

Suspect Esquivel told Homicide investigators that while he drove his Mustang on [redacted] e saw a black and white patrol vehicle. Suspect Esquivel said the deputies initiated a traffic stop of him and utilized their overhead light bar steady red and flashers. Suspect Esquivel said once he saw their lights, he slowed down. Suspect Esquivel waited for the deputies to give him commands, but they never did. Suspect Esquivel said he continued to drive toward his friend's house at [redacted] and [redacted]

Suspect Esquivel believed someone was tried to chase him, so he decided to flee. Suspect Esquivel stated the deputies tried to pull him over on Pioneer, but he sped off and ran some stop signs. Suspect Esquivel stopped his vehicle near [redacted] and [redacted] and ran toward his friend's house. Suspect Esquivel attempted to open the rear yard security gate at his friend's house, but it was locked. Suspect Esquivel remembered the deputies stated to keep his hands up. Suspect Esquivel stated he had his cell phone in his hand. Suspect Esquivel stated he was under the influence of methamphetamine at the time of the incident.

IAB Interview

On September 14, 2022, an IAB investigator left a voice mail for Suspect Esquivel to contact IAB for an interview. To date, Suspect Esquivel has not contacted IAB to be interviewed.

On October 13, 2022, Suspect Esquivel was mailed a certified letter which requested he contact IAB to be interviewed. The certified letter was signed for on October 15, 2022. Suspect Esquivel never contacted IAB to be interviewed **[MISCELLANEOUS DOCUMENTS]**.

LOS ANGELES COUNTY DISTRICT ATTORNEY'S OFFICE
BUREAU OF PROSECUTION SUPPORT OPERATIONS
JUSTICE SYSTEM INTEGRITY DIVISION

GEORGE GASCÓN • District Attorney
JOSEPH F. INIGUEZ • Chief of Staff

• Director

May 18, 2022

Captain Andrew D. Meyer
Los Angeles County Sheriff's Department
Homicide Bureau
1 Cupania Circle
Monterey Park, California 91755

Re: Non-fatal Officer Involved Shooting of Abraham Esquivel
J.S.I.D. File #21-0065
L.A.S.D. File #021-01842-0455-055

Dear Captain Meyer:

The Justice System Integrity Division of the Los Angeles County District Attorney's Office has completed its review of the February 12, 2021, non-fatal shooting of Abraham Esquivel by a member of the Los Angeles County Sheriff's Department. Our detailed analysis of this incident is contained in the attached memorandum.

Very truly yours,

GEORGE GASCÓN
District Attorney

ALAN YOCHELSON
Head Deputy District Attorney
Justice System Integrity Division

c: Deputy Juan Bendezu, [redacted]

Hall of Justice
211 West Temple Street, Suite 1200
Los Angeles, CA 90012
[redacted]
WEBSITE: http://da.lacounty.gov

MEMORANDUM

TO: CAPTAIN ANDREW D. MEYER
Los Angeles County Sheriff's Department
Homicide Bureau
1 Cupania Circle
Monterey Park, California 91755

FROM: JUSTICE SYSTEM INTEGRITY DIVISION
Los Angeles County District Attorney's Office

SUBJECT: Non-Fatal Officer Involved Shooting of Abraham Esquivel
J.S.I.D. File #21-0065
L.A.S.D. File #021-01842-0455-055

DATE: May 18, 2022

The Justice System Integrity Division of the Los Angeles County District Attorney's Office has completed its review of the February 12, 2021, non-fatal shooting of Abraham Esquivel by Los Angeles County Sheriff's Department (LASD) Deputy Juan Bendezu. We have concluded that Deputy Bendezu acted in lawful self-defense.

The District Attorney's Command Center was notified of the shooting at 7:28 p.m. on February 12, 2021. The District Attorney Response Team responded to the location and was given a briefing regarding the circumstances surrounding the shooting and a walk-through of the scene.

The following analysis is based on investigative reports, audio recordings of witness interviews, photographs, radio traffic, and surveillance video submitted to this office by LASD Detectives Raymond Lugo and Leopoldo Sanchez. The voluntary statement of Deputy Bendezu was also considered as part of this analysis.

FACTUAL ANALYSIS

Summary

On February 12, 2021, at approximately 6:00 p.m., LASD Deputy Juan Bendezu was in uniform and on patrol in a marked patrol vehicle when he received a radio call that two other uniformed deputies, Jose Pena and Dylan Butler, were in pursuit of a reckless driver who was possibly DUI.

When the reckless driver turned a corner, Pena and Butler saw a black object fly out of the passenger side window. Pena and Butler thought the object could be a gun. A loaded 9mm handgun was later located in that area.

Bendezu joined in the vehicle pursuit. When the driver briefly yielded and started to exit his vehicle, Bendezu, Pena, and Butler recognized the driver as Abraham Esquivel, a known gang member nicknamed "Red" who Bendezu had recently arrested for being in possession of a firearm.

The deputies ordered Esquivel to put up his hands. Esquivel did not comply, re-entered his vehicle, and continued to drive away at high speed while running stop signs and red lights. Esquivel stopped again a short distance away, exited the vehicle, and ran with a black object, later determined to be a cell phone, in his hand. Butler yelled, "He has a gun!" Bendezu, who also believed Esquivel had a gun in his hand, chased Esquivel on foot and repeatedly ordered, "Red! Drop the gun!"

When Esquivel tried to enter the gate of a residence but was unable, he turned toward Bendezu, with the cell phone in his hand. Bendezu believed Esquivel had a gun and was going to shoot and kill him. Bendezu fired three rounds from his service weapon at Esquivel, striking him in the buttocks and thigh. Esquivel survived his injuries. Based on his actions in this matter, Esquivel was convicted of felony evading in case number VA155518 and is currently serving a prison term in Corcoran State Prison.

The Shooting Scene

The shooting scene is shown in the photographs below:

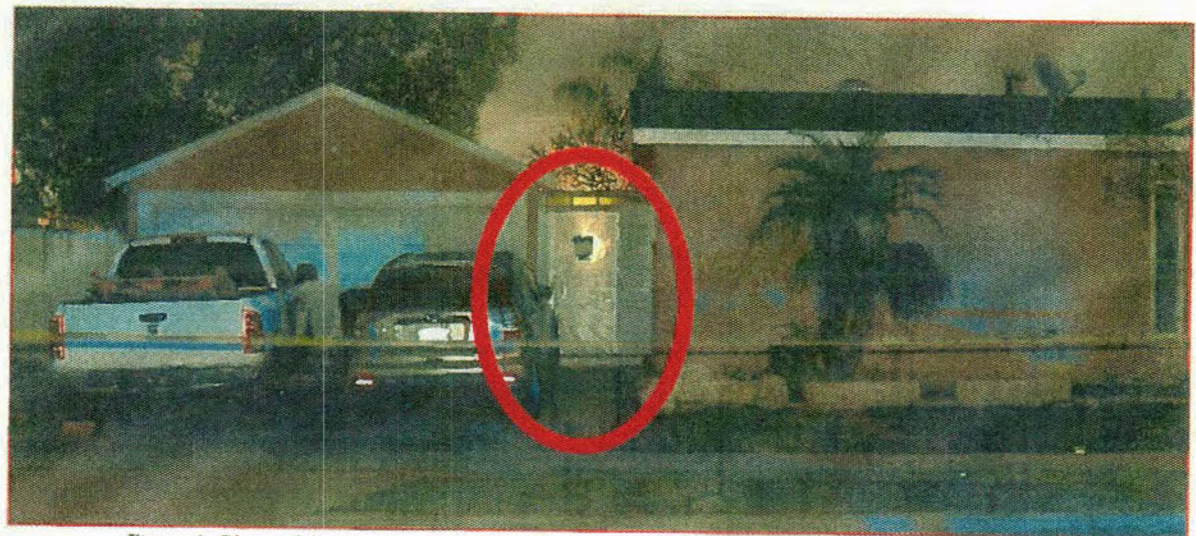


Figure 1- Photo of the shooting scene. The circled area depicts where Esquivel was struck by gunfire.



Figure 2- The shooting scene with Esquivel's cell phone circled in red.

The Gun

Prior to the deputy involved shooting, Esquivel threw a 9mm Glock handgun from his vehicle. It struck the street and went through a wrought iron fence. Those photos below show the firearm and where it was located.



Figure 3- Esquivel's 9mm handgun.



Figure 4- Area where Esquivel's gun was located, with gun parts and bullets in the street.

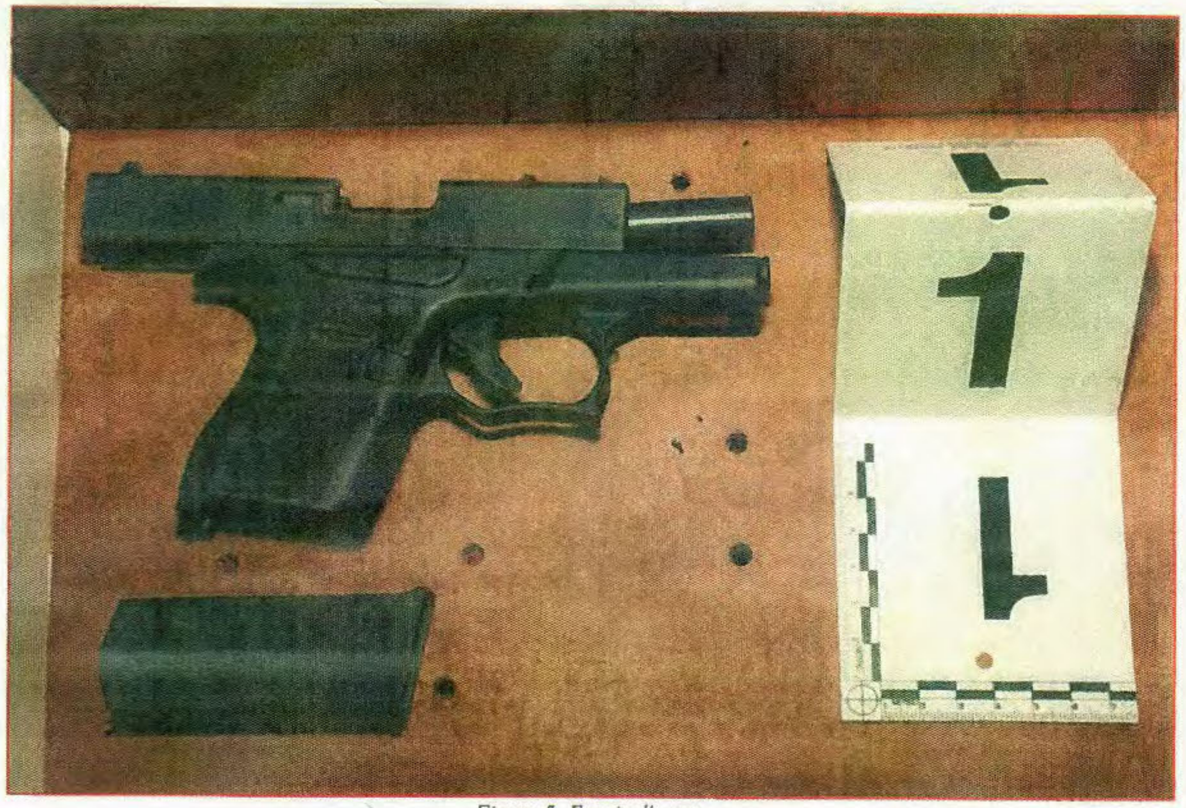


Figure 5- Esquivel's gun.

Radio Traffic

Butler and Pena broadcast that they were in pursuit of a reckless driver who appeared to be driving under the influence. Bendezu radioed he was enroute to assist. Sirens are audible on the recording and orders from the deputies can be heard but are not discernable. Bendezu reported he was in foot pursuit and a short time later he reported that a deputy involved shooting had occurred.

Approximately two minutes elapsed from the time Butler and Pena broadcast being in pursuit and when Bendezu reported the shooting.

There is no information discernible on the recording documenting that the deputies stated they were chasing an armed gang member.

DNA

DNA testing was conducted on the 9mm handgun located in the area where the deputies saw Esquivel throw a black object. The trigger/trigger guard, slide and frame, and grip of the gun were DNA tested and all contained Esquivel's DNA profile.

Fingerprints

The gun, live rounds, and gun parts were fingerprinted. No fingerprints were recovered.

Video Surveillance

Three cameras, without audio, captured Esquivel running from Bendezu. The shooting itself was not captured on video. A video of Bendezu chasing Esquivel is shown below:



Figure 6- Video of Bendezu chasing Esquivel.

Injuries

Esquivel was shot in the left thigh and left buttock. He underwent surgery, a projectile was removed from his abdomen, and he survived his injuries.

Deputy Pena's Statement

Pena was on patrol, in uniform, and driving a marked black and white patrol car with his partner, Butler, who was also in uniform. Pena saw a speeding car run a stop sign. He followed and determined the driver was driving recklessly. He attempted a traffic stop and the car failed to yield and sped away. The car made a turn and Pena saw a black object come out of the passenger side window. Butler broadcast that they were in pursuit of a reckless DUI. During the pursuit the driver did not stop for any red lights or stop signs. The car suddenly stopped, and the driver emerged. Pena recognized the driver as a gang member named "Red" (Esquivel) who was arrested recently for being in unlawful possession of a firearm. The driver re-entered the car and sped away. A short time later, Esquivel stopped, exited the vehicle, and ran. Bendezu and Pena chased on foot. Butler yelled, "He has a gun!" Pena was approximately 40 to 50 feet behind Bendezu. Pena saw Bendezu on a sidewalk with his gun drawn and was yelling at the man, "Show me see your hands!" Pena could not see the man at that point. He could only see Bendezu holding the man at gunpoint, and he heard three gunshots. At the time of the shooting, Pena was not in a position to see the man. When he got closer he saw Esquivel on the ground.

Deputy Butler's Statement

Butler was on patrol with Pena when they attempted a traffic stop on a car that was speeding and ran a stop sign. The car sped away, turned a corner, and Butler saw an object thrown from the passenger window, followed by a loud noise. Butler could not visually identify the object, but he heard a heavy object impacting the ground or a parked car which led him to believe the object was a gun. The driver eventually stopped and placed a foot outside the car as if to exit. When he did so, Butler recognized the driver as a gang member named "Red" (Esquivel). Butler and Bendezu had recently arrested Esquivel for gun possession. As Esquivel was exiting the vehicle, Butler told Bendezu to use caution because Esquivel may have thrown a gun. Esquivel re-entered the car and drove away and the pursuit continued. Esquivel stopped again, exited the vehicle, and ran. Esquivel was holding a black object, which Butler believed was gun, near his waistband. Butler and Pena cleared Esquivel's vehicle and did not see any passengers. Butler, Pena, and Bendezu chased Esquivel on foot. Bendezu and Butler shouted commands at Esquivel to stop and drop the gun. Butler was 30 to 40 feet away from Bendezu. Esquivel turned into a driveway, out of Butler's view. Butler heard gunshots and was not sure if Bendezu or Esquivel had fired. He heard Bendezu on the radio advising that there had been a shooting. The deputies requested a ballistic shield be delivered to the scene as they did not want to approach Esquivel, who was on the ground, because they believed he was armed. They approached with the shield, handcuffed Esquivel, and Butler saw a black cell phone on the ground next to him. The fire department was summoned, and they provided medical care to Esquivel.

Abraham Esquivel's Statement

Esquivel was interviewed at the hospital. Esquivel said he was a gang member, was under the influence of methamphetamine at the time of the incident and fled from the deputies. He saw lights but did not hear sirens, knew the deputies were chasing him on foot, and had a cell phone in his hand when the shooting occurred. He denied throwing a gun from the vehicle. He fled because there had been a lot of shootings and he thought someone was chasing him. Esquivel said before he was shot the deputies were ordering him to keep his hands up and not move. He may have dropped his cell phone, and he did not remember turning toward Bendezu.

[redacted] Statement

[redacted] told investigators he heard the shooting. He heard sirens and unintelligible screaming and yelling followed by commands for someone to put their hands up. Then he heard three to four gunshots.

[redacted] Statement

[redacted] told investigators he heard the shooting. He heard unintelligible screaming and banging on a gate. [redacted] next heard the "cops" yell, "Get your hands up!" Then he heard three gunshots. After the shooting he heard the deputies ask, "Where did you toss it?" He did not hear a response.

Deputy Bendezu's Statement

Bendezu was on patrol and responded with lights and siren to assist Butler and Pena in a pursuit involving a reckless driver who was suspected to be DUI. He joined the pursuit, saw the vehicle stop, and a man started to exit. Butler told Bendezu to be careful because he saw the driver discard a gun. The driver entered his car and the pursuit continued. The driver stopped the car again, exited, and ran. At that time, Bendezu recognized the driver as a gang member with the name "Red" (Esquivel) whom he had arrested four to five months prior for a gun violation.

Bendezu chased Esquivel. Bendezu saw that Esquivel had an object in his right hand, and Bendezu believed it was a gun. Bendezu was approximately 20 feet behind Esquivel and commanded him to stop and drop the gun. Pena and Butler were trailing behind and yelled, "Hey dude! Drop the gun! Drop the gun, Red!" Bendezu also yelled at Esquivel, "Red! Stop! Drop the gun! Drop the gun!" Esquivel continued to run.

Esquivel suddenly turned left into a driveway, holding something in his right hand, and was attempting to enter a gate. Bendezu pointed his service weapon at Esquivel and ordered him again to drop the gun. Bendezu ordered Esquivel, "Red! Red! Drop the gun! Drop the gun, dude! Let me see your hands!" Esquivel was unable to get through the gate and turned toward him with a hand near his waistband. When Esquivel turned, Bendezu thought Esquivel had the "jump" or "drop" on him (meaning Esquivel had a shooting advantage), and he believed Esquivel was going to shoot and kill him. It was a "shitty" feeling that gave him goosebumps. Esquivel made a quick movement from his right hand near his waistband and Bendezu saw a black object. Esquivel thought, "Fuck. He has me. He has the drop and I'm going to get shot." Bendezu yelled, "Oh shit! Gun!" Bendezu fired three rounds at Esquivel, saw him fall, and saw an object fall. When Esquivel was on the ground, Bendezu, Butler, and Pena held Esquivel at gunpoint and ordered him to show his hands. Butler and Pena checked Bendezu to see if he was shot. Esquivel kept reaching for the object he dropped. Bendezu told him, "Hey, Red. We're going to shoot you dude. Don't reach. Don't reach." Esquivel said, "Bro. I'm sorry. I'm sorry. It was just the phone. I fucked up. I'm sorry." Since the deputies believed that Esquivel might still be armed, they requested a ballistic shield and asked the fire department to stage nearby until they confirmed Esquivel was not armed. The deputies approached with a ballistic shield and took Esquivel into custody.

LEGAL ANALYSIS

The Law

California law permits the use of deadly force in self-defense or in the defense of others if the person claiming the right of self-defense or the defense of others actually and reasonably believed that he or others were in imminent danger of great bodily injury or death. Penal Code section 197; *People v. Randle* (2005) 35 Cal.4th 987, 994 (overruled on another ground in *People v. Chun* (2009) 45 Cal.4th 1172, 1201); *People v. Humphrey* (1996) 13 Cal.4th 1073, 1082; *see also,* CALCRIM No. 505.

A peace officer is justified in using deadly force upon another person when the officer reasonably believes, based on the totality of the circumstances, that such force is necessary for either of the following reasons: (1) to defend against an imminent threat of death or serious bodily injury to the officer or to another person; or (2) to apprehend a fleeing person for any felony that threatened or resulted in death or serious bodily injury, if the officer reasonably believes that the person will cause death or serious bodily injury to another unless immediately apprehended. Penal Code section 835a(c)(1)(A) and (B).

A threat of death or serious bodily injury is imminent when, based on the totality of the circumstances, a reasonable officer in the same situation would believe that a person has the present ability, opportunity, and apparent intent to immediately cause death or serious bodily injury to the peace officer or another person. An imminent harm is not merely a fear of future harm, no matter how great the fear and no matter how great the likelihood of the harm, but is on that, from appearances, must be instantly confronted and addressed. Penal Code section 835a(e)(2).

When considering the totality of the circumstances, all facts known to or perceived by the peace officer at the time, including the conduct of the officer and the subject leading up to the use of deadly force is taken into consideration. Penal Code section 835a(a)(4) and (e)(3). The peace officer's decision to use force is not evaluated with the benefit of hindsight and shall account for occasions when officers may be forced to make quick judgments about using force. Penal Code section 835a(a)(4).

In evaluating whether a police officer's use of deadly force was reasonable in a specific situation, it is helpful to draw guidance from the objective standard of reasonableness adopted in civil actions alleging Fourth Amendment violations. "The 'reasonableness' of a particular use of force must be judged from the perspective of a reasonable officer on the scene, rather than with the 20/20 vision of hindsight… The calculus of reasonableness must embody allowance for the fact that police officers are often forced to make split-second judgments—in circumstances that are tense, uncertain, and rapidly evolving—about the amount of force that is necessary in a particular situation." *Graham v. Connor* (1989) 490 U.S. 386, 396-397. "'What constitutes "reasonable" action may seem quite different to someone facing a possible assailant than to someone analyzing the question at leisure.'" (*Martinez v. County of Los Angeles, supra,* 47 Cal.App.4th at p. 343 (quoting *Smith v. Freland* (6th Cir. 1992) 954 F.2d 343, 347).

Analysis

Esquivel was driving recklessly and evading the deputies. They had sufficient probable cause to arrest him for felony evading and reckless driving. The presence of uniformed deputies chasing Esquivel with lights and siren provided notice that Bendezu, Pena, and Butler were deputies who were investigating his activities. Esquivel also admitted he knew deputies were chasing him. Having just evaded the deputies and throwing a gun, and knowing the deputies were there, and then being ordered to stop by all three deputies, Esquivel had a duty to submit himself to their detention. He failed to do so.

In this case, Bendezu believed that his life was in imminent danger. Bendezu described Esquivel as presenting himself in a manner causing him to believe that Esquivel was pointing a handgun at him. Bendezu also knew that Esquivel was a gang member and that gang members often arm themselves. Bendezu actually knew that Esquivel had a gun in the past and may have also thrown a gun from his car during the pursuit. Bendezu saw a black object in Esquivel's right hand that Bendezu believed was a gun. Under the dim lighting conditions and rapidly unfolding circumstances, and based on Bendezu's prior knowledge of Esquivel arming himself, that belief was reasonable.

When Bendezu saw Esquivel make a sharp turn into the darked corner of a driveway, Bendezu could see that Esquivel still had the object in his hand and then quickly turned toward him in a manner consistent with Esquivel turning and preparing to shoot. Bendezu and his partners had repeatedly ordered Esquivel to stop, show his hands, and drop the gun and he did not comply. The fact that Butler and Pena also believed that Esquivel was still armed corroborates Bendezu's observation and belief that Esquivel was armed.

Bendezu yelled repeatedly, "Red! Drop the gun!" When Esquivel turned toward him, Bendezu spontaneously yelled to his partners, "Oh shit! Gun!" These are the actions of an individual who actually believes he is faced with an imminent threat. The urgency of this exclamation manifests his belief that Esquivel had a gun in his hand. Believing Esquivel got the "drop" on him and was going to shoot and kill him, Bendezu fired three rounds at Esquivel.

Thereafter, Bendezu and the other deputies engaged in further activities consistent with their reasonable belief that Esquivel was armed. Within moments after firing, Butler and Pena checked Bendezu for injuries, thinking that Esquivel might have shot Bendezu. The deputies also deployed a ballistic shield to approach Esquivel, still believing he could be armed.

Finally, Esquivel's state of mind would be evidence available for a jury to consider in evaluating whether he acted in a manner consistent with the officers' descriptions and beliefs. Esquivel admitted he was under the influence of methamphetamine, which would have affected his judgment. He continued to flee from the deputies, despite their repeated commands to stop and comply, and given the circumstances of an active chase of a known and possibly armed gang member, this is reasonably seen by Bendezu as aggressive and threatening.

Under these circumstances, the evidence is sufficient to show Esquivel turned toward Bendezu, with a black object in his hand. The fact that the object was later determined to be a cellphone does not alter the reasonableness of Bendezu's decision.

CONCLUSION

Under these facts, Deputy Bendezu was reasonable in his belief that Esquivel had a gun and was about to shoot him. The law judges the deputy's actions based upon the reasonable perception of the threat. The evidence proves that Bendezu acted lawfully under the circumstances.